

199919035

**Internal Revenue Service**

**Department of the Treasury**

Index No. 9100.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply to:

CC:DOM:FI&P:5/PLR-119125-98

Date:

FEB 9 1999

LEGEND:

Company =

State =

County =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

Date 3 =

W =

Dear Sir or Madam:

This is in response to your request for an extension of time, as provided for under § 301.9100-1 of the Procedure and Administration Regulations, to file a carryforward excess volume cap election pursuant to § 146(f) of the Internal Revenue Code from Year 1 to Year 2. County represents the following set of facts.

FACTS:

State's Governor is responsible for allocating the State's private activity bond volume cap among the governmental units in State having authority to issue private activity bonds. County

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is a political subdivision of State authorized to issue revenue bonds. Company approached County about financing the construction of a power plant (the "Project"), that, it is represented, will qualify as a solid waste disposal facility under § 142(a)(6). The Project will be owned and operated by Company. County applied to State for an allocation of volume cap in Year 1. On Date 1, the Governor allocated W of private activity bond volume cap to County for the Project.

Despite being allocated volume cap, County did not issue bonds for the Project in Year 1. However, State was not aware that the bonds were not issued, and no election to carryforward the W of volume cap was filed. When State discovered this failure, it agreed to let Company take responsibility for filing the late election, provided the election was promptly filed and Company hired counsel to ensure the allocation was preserved. A subsequent written communication from the counsel for Company to State acknowledged counsel's responsibility for preparation and filing of the election to carryforward W of Year 1 volume cap.

Company submitted a Form 8328 on Date 2, and immediately thereafter submitted this private letter ruling request. Form 8328 and this ruling request were submitted before the failure to make the regulatory election was discovered by the Service; however, Form 8328 was incorrectly completed. Counsel was informed of the incorrect completion of Form 8328 during National Office consideration of the private letter ruling request. Form 8328 was corrected and filed with the Internal Revenue Service in Ogden, Utah on Date 3. Granting an extension of time to file the Form 8328 will not result in the taxpayer having a lower tax liability in Year 2 (the taxable year affected by the amended form), than if the carryforward election had been timely made (taking into account the time value of money).

**LAW:**

Section 146(f) provides that if an issuing authority's volume cap for any calendar year after 1985 exceeds the aggregate amount of tax-exempt private activity bonds issued during the calendar year (by the authority), the authority may elect to treat all (or any portion) of the excess as a carryforward for one or more carryforward purposes.

The election is made by filing a Form 8328 with the Internal Revenue Service Center, Ogden, UT 84201. Form 8328 must be filed by the earlier of (1) February 15 of the calendar year following the year in which the excess amount arises, or (2) the date of issue of bonds issued pursuant to the carryforward election.

Section 301.9100-1(c) provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in 1.9100-1(b) as

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published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

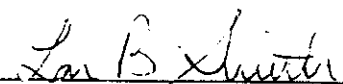
Section 301.9100-3(a) through (c)(1)(i) of the regulations sets forth rules that the Internal Revenue Service generally will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith. Section 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

CONCLUSION:

While the Form 8328 submitted with the request was incorrectly completed, this ruling request was submitted before the Service discovered the failure to make the election. Moreover, the government is not prejudiced by the granting of this relief. Accordingly, based on the facts and representations submitted, County is granted an extension of time to Date 3, to file a correctly completed Form 8328 for Year 1 for a carryforward of volume cap in the amount of W.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. Pursuant to a Power of Attorney on file with this office a copy of this letter is being sent to your authorized representative.

Sincerely yours,

  
Assistant Chief Counsel  
(Financial Institutions & Products)

Enclosure:

Copy for § 6110 purposes